ANNEXURE 3

THE MYSORE STATE SERVANTS (DETERMINATION OF AGE) BILL, 1973

(L.A. Bill No. 28 of 73)

A Bill to provide for the determination of the age of State servants.

WHEREAS it is expedient to provide for the determination of the age of State servants in so far as it relates to their conditions of service as such State servants ;

BE it enacted by the Mysore State Legislature in the Twenty-fourth Year of the republic of India as follows:—

1. SHORT TITLE: This act may be called the Mysore State Servants (Determination of Age) Act, 1973.

2. Definition : —In this Act State Servant means a person who is a member of a civil service of the state of Mysore or who holds a civil post under the State of Mysore.

DETERMINATION OF AGE ON ENRTY IN-TO STATE SERVICE

(1) Every person on appointment as a State servant shall declare his age along with the date of birth, and in support of such declaration shall furnish to the appointing authority documentary evidence, namely, an authenticated extract from the birth or baptismal register, original horoscope or corres-pondence contemporaneous with the time of birth indicating the date and time of birth, an authenticated copy of extent from the entries made in school or college records indicating the date of birth.

Provided that where any such document is not available, the reasons for its non-availability shall be furnished along with such other documentary evidence in support of the declaration of the age and date of birth as the appointing authority may require.

(2) The appointing authority shall after considering the evidence produced by the State servant and after such enquiry as it deems fit, accept the age and date of birth which in its opinion is satisfactorily established ; and shall inform the State servant and shall record or cause to be recorded in the service register or book or any other record of service of the State servant the age and date of birth so accepted :

Provided that if the age and date of birth of a State servant has been determined by a decree of a civil court obtained by the State servant against the State Government and which has become final before the commencement of this Act the age and date of brith so determined shall

be accepted and recorded or caused to be recorded in the service register or book or any other record of service of the State servent concerned.

(3) Notwithstanding anything contained in sub-sections (1) and (2) the age and date of birth of a State servant accepted and recorded in his service register or book or any other record of service before the date of commencement of this Act in accordance with the rules then in force shall be deemed to be the age and date of birth of such State servant accepted and recorded in the service register or book or any other record of service under sub-section (2).

(4) The age and date of birth accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service under sub-section (2) or as the case may be sub-section (3), shall subject to any alteration made under section 5, be applicable for all purposes relating to the conditions of service including supersnuation and retirement of the State servant concerned.

4. Bar of alteration of age except under the Act.— Notwithstanding anything contained in any law or any judgment, decree or order of any court or other authority, no alteration of the age or date of birth of a State servant as accepted and recorded or deemed to have been accepted and recorded in his service register or book or any other record of service under section 3 shall in so far as it relates to his conditions of service as such State servant, be made except under section 5.

5. ALTERATION OF AGE OR DATE OF BIRTH OF STATE SERVANTS—(1) Subject to sub-section (2), the State Government may, at any time, after an inquiry, alter the age and date of birth of a State servant as recorded or deemed to have been recorded in his service register or book or any other record of service.

Provided that no such alteration shall be made if the age and date of birth of a State servant has been accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service in pursuance of a decree of a civil court obtained by the State servant against the State Government.

Provided further that no such alteration shall be made without giving the State servant concerned a reasonable opportunity of being heard.

(2) No such alteration to the advantage of a State servant shall be made unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of this Act, whichever is later.

(3) The State Government may by notification in the official Gazette appoint such officer as it deems fit for the purpose of making an inquiry under this section:

Provided that the powers of the State Government under sub-section (1) and this sub-section shall in respect of the alteration of the age or date of birth of a State servant who—

(i) is subject to the control of the High Court under article 235 of the Constitution, be exercisable by the High Court; and

(ii) is an officer and servant of the High Court, be exercisable by the Chief Justice or such other Judge or officer of the High Court as he may direct.

(4) The officer appointed under sub-section (3) shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesess or documents.

(5) (a) The officer appointed under sub-section (3) shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) is committed in the view or presence of the said officer, the said officer, may after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898.

(b) Any proceeding before the said officer shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

6. BAR OF JURISDICTION OF COURTS.—(1) No court shall have jurisdiction to settle, decide or deal with any question which is required to be decided under this Act.

(2) No decision under this Act shall be questioned in any court of law.

STATEMENT OF OBJECTS AND REASONS

At present the provisions contained in article 404 of the Mysore Financial Code prescribe the procedure for determination of date of birth with reference to certain documents like an authenticated extract from the birth or the baptismal register, S.S.L.C. certificate, affidavits, etc.

Although the provisions of the Mysore Financial Code have been issued under the Constitution of India, they do not have the effect of excluding civil courts from determining the date of birth for purposes of ascertaining the date of superannuation of Government servants. This has enabled Government servants to institute suits some time before the date of superannuation for determining their dates of birth and in many cases decrees have been passed determining the date of birth, which in many cases is different from the one determined under article 404 of the Mysore Financial Code.

Determination of age, for service purposes will have to be done by Government taking into consideration all the relevant material. It is therefore considered necessary to vest the power in the Government and in the case of Government servants who are subject to the control of the High Court under article 235 of the Constitution of in the High Court and exclude the jurisdiction of courts in the matter.

Hence the Bill.

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for appointment of an officer by the State Government for the purpose of making an inquiry relating to alteration of age or date of birth of State servants. If the number of applications received under the said clause are many it may become necessary to appoint some staff which would involve some recurring expenditure from the Consolidated Fund of the State. It is not possible to assess the probable expenditure as it depends upon the number of applications received under the said clause. If very few applications are received appointment of new staff may not be necessary and there would be no extra expenditure from the Consolidated Fund of the State.

D. DEVARAJ URS.

Te. HANUMANTHAPPA,
Secretary.